power to interfere. In the present case the Board refused to exercise its powers under section 9(1)(b). If they had been content to let the matter remain there the Court would have no power to do anything about it. The Board however proceeded to give reasons. They seem to have been under the impression that they were prevented from increasing the Rent under section 9(1)(b) by reason of what was said by Taylor J. in Originating Motion No. 57 of 1953[1].

The report does not show what the Court had to decide in that case. An examination of the record shows that the only point of law raised in that case was that there having been an increase of rent on other grounds the Court could not make an increase under section 9(1)(b). The motion proceeded to ask for review on grounds of fact, namely, that there was "no good or sufficient evidence" to justify the finding of the Board. That was not a ground on which the Court could interfere in any case. In his judgment the learned Judge does not seem to have dealt with the question of law raised in the motion, but he proceeded to deal with the application of the proviso to section 9(1)(b) which does not seem to have been in question, and then to have given his views on the way in which the Board should exercise its discretion under this part of the Ordinance. These views seem to be based on the ground that "the manifest object (of the Ordinance) is to stabilize rents of pre-war buildings at standard plus the specifically authorised additions where those apply". I cannot agree with this. The whole object of section 9(1)(b) is to give discretion to the Board to fix rents at a figure (subject to the proviso) which seems to them just and proper apart altogether from the question of what is the standard rent.

The words of the Ordinance are "just and proper". I do not think there is anything in the Ordinance to give those words any artificial or restricted meaning.

Some question arose as to the effect of consent of the tenant to the increase applied for. Of course, if the Board had thought that they were obliged to approve of any increase applied for where the tenant had assented, they would have been wrong in law. I do not think that they ever thought such a thing. Where a figure has been agreed between people, particularly business people, as the result of free bargain, I do not think that the fact that they have so agreed is irrelevant in deciding what is just and proper.

The matter is referred back to the Board to fix the rent at a figure which to the Board shall seem just and proper or to refuse to make any order, in its discretion.

Order accordingly.

Solicitors for the plaintiff: *Elias Bros.*
Solicitor for the defendant: *M. Ismail.*

JAGIR SINGH & ANOR. v. TAN CHOK HOW

[O. C. J. (Storr, J.) April 17, 1954]
[J. B. — Civil Suit No. 46 of 1953]

Bills of Sale Enactment, ss. 3 and 4 — Whether Court will go behind documents to construe exact nature of documents — Evidence Ordinance ss. 65, 66 and 92.

This was claim on a Bill of Sale relating to premises at Pontian, Johore. It was alleged on behalf of the defence that the Bill of Sale formed part of a loan transaction and was given by way of security and that as it was not registered it was invalid.

Held: (1) evidence was admissible to show the true nature of the transaction; (2) on the facts of the case the Bill of Sale was given by way of security and as it was not registered in accordance with s. 3 of the Bill of Sale Enactment it was invalid.

Cases referred to :—

(1) *Wok binte Hussein v. Harchand Singh* (1953) M.L.J. 176.

(2) *Koh Sek Lim v. Marriott* (1941) M.L.J. 214.

CIVIL SUIT.

John Pillai for the plaintiffs.

A. N. Mitra for the defendant.

Cur. Adv. Vult.

Storr, J.: — This was a case in which the plaintiffs claimed by virtue of a Bill of Sale dated 11th May, 1952, the possession of premises Nos: 194 and 196 Jalan Bakek, Pontian, Johore, and for an account from the defendant for rents collected by him from 1st June, 1952, to 30th September, 1953, and to damages for wrongfully withholding possession.

The defendant in his defence stated that the Bill of Sale really formed part of another transaction in which he had received a loan and that there was an Agreement of Loan signed at the same time as the Bill of Sale by which he could repay the consideration in the Bill of Sale, i.e. $5,850, by three monthly instalments of $1,950 and that the Bill of Sale was given by way of security, and being unregistered was invalid. The defendant stated in evidence that he approached the first plaintiff for a loan of $4,000 at the beginning of April, 1952, but that after negotiation the first plaintiff agreed to lend him $3,000 upon his giving him a Bill of Sale for the houses Nos. 194 and

196 Jalan Bakek, Pontian, and at the same time it was agreed that the plaintiffs would execute an Agreement by which, if the loan of $3,000 plus interest $900 was repaid in three monthly instalments, the Bill of Sale would be handed back to him. He produced a Bill of Sale and an Agreement of Loan (Exhibits D. 2 and D.3). The defendant then stated that at the beginning of May the two plaintiffs approached him and asked if he was going to pay his instalment of $1,300, but he asked them for a further loan, and they agreed to advance him a further loan of $600 on condition he would sign a Bill of Sale for the same two houses for $5,850. This sum was made up of :—

Loan on 17th April, 1952	$3,000	
Agreed interest for 3 months	900	
Further loan on 11th May, 1952	600	
		$4,500
3 months interest on $4,500		1,350
Total ...		$5,850

He stated that at the time of signing the Bill of Sale dated 11th May, 1952, the plaintiffs also signed a Loan Agreement similar to Exhibit D. 3 for the repayment of the $5,850 by three monthly instalments, but that the plaintiffs had not produced that Agreement, a copy of which had at no time been given to him. The defendant counterclaimed as follows :—

"(a) A Declaration that the Bill of Sale dated 11th May 1952 executed by the defendant in favour of the plaintiffs in respect of premises Nos. 194 and 196 Jalan Bakek, Pontian Kechil, Johore, is null and void.

(b) An order for delivery of the said Bill of Sale by the plaintiffs to the defendant for cancellation.

(c) An order for all necessary rectification of Registers kept in the office of the Town Board, Pontian, under s. 57 of the Town Board Enactment, 1952 (Johore) relating to entries made therein in respect of premises Nos. 194 and 196 Jalan Bakek, Pontian Kechil, for the purpose of restoring the name of the defendant as the owner of the two premises."

The defendant's case, therefore, is that the Bill of Sale of 11th May, 1952, was in fact part of a loan transaction and was given by way of security and not being registered was invalid.

The plaintiffs in their evidence denied the story of the defendant that the Bill of Sale of 11th May, 1952 (Exhibit P. 1) formed part of a loan transaction, but stated it was an absolute Bill of Sale and was registered with Notice of Transfer of the houses at the Town Board, Pontian. However, the second plaintiff, who endeavoured throughout his evidence to put the responsibility of the whole transaction on the first plaintiff, admitted that the Bill of Sale of 17th April, 1952, was executed at the same time as a Loan Agreement and that those documents (Exhibits D. 2 and D. 3) were handed over to the petition writer (P.W. 5) Abdul Majid when he prepared the Bill of Sale of 11th May, 1952 (Exhibit P. 1) on which the plaintiffs relied. Abdul Majid (P.W. 5) stated that he in fact prepared the Bill of Sale (Exhibit P. 1) and also a Loan Agreement similar in terms to Exhibit D. 3, but with the amount of $5,850 in lieu of $3,900. Both plaintiffs in their evidence stated that the amount given to the defendant for the first Bill of Sale was $3,900 and not $3,000 as alleged by the defendant; however, it is significant that in Exhibit D. 2 the original figure typed therein was "(3,000)" but the words "nine hundred" have been typed as an addition and above the figure "$3,000)" to the words "Three thousand" which, I think, shows that the original amount stated in the Bill of Sale was in fact $3,000.

Mr. Pillai, who appeared for the plaintiffs, said that his clients relied on the Bill of Sale (Exhibit P. 1) dated 11th May, 1952, which was an absolute Bill of Sale and that the defendant could not go behind that or give verbal evidence of any other Agreement. He referred to section 92 of the Evidence Ordinance and submitted that if the defendant alleged that his case came within any of the provisoes to section 92 the onus was on him.

Mr. Mitra, who appeared for the defendant, submitted that he was entitled to give evidence which would go to invalidate the Bill of Sale, and referred to the first proviso to section 92 of the Evidence Ordinance. With regard to the calling of secondary evidence of the Agreement of Loan of the 11th May, 1952, he referred to sections 65 and 66 of the Evidence Ordinance, and also to the judgment in *Wok binte Hussein v. Harchand Singh*[1]. For the reasons given in my judgment in that case I admitted the evidence called by the defendant as to the validity of the Bill of Sale and, as Mr. Mitra on behalf of the defendant had given notice to produce the Agreement of Loan dated 11th May, 1952, which he alleged was in the hands of the plaintiffs, I admitted secondary evidence of the contents of such Agreement. Further, it must be noted that it was not only the evidence of the defendant that referred to the Agreement of Loan of the 11th May, 1952, but also that of (P.W. 5) Abdul Majid, the petition writer who prepared the documents on the 11th May, 1952, and was called by the plaintiffs as their witness. The defendant in his defence also alleged that the plaintiffs were unlicensed moneylenders and therefore the transaction was null and void because the plaintiffs had not complied with the provisions of the Moneylenders Ordinance. However, on that point the only evidence of any moneylending transaction carried on by the plaintiffs since the coming into force of the Moneylenders Ordinance, 1951, was the present transaction, and following the decision in *Koh Sek Lim v. Marriott*[2], I do not consider that there was

sufficient evidence to show that the plaintiffs were in fact moneylenders.

On considering the whole of the evidence in the case I have come to the conclusion that the transaction was in fact a loan transaction, i.e. the Bill of Sale of the 11th May, 1952 (Exhibit P. 1) together with the Agreement prepared by Abdul Majid (P.W. 5) dated 11th May, 1952. On this point I accept the evidence of the defendant and that of Abdul Majid, plaintiffs' fifth witness. The Bill of Sale being therefore given by way of security and not being registered in accordance with section 3 of the Bills of Sale Enactment (No. 39 of Johore) I hold to be invalid and the plaintiffs' claim is accordingly dismissed with costs.

With regard to the counterclaim, I give judgment to the defendant in the terms of paragraphs (a), (b) and (c) and costs.

Judgment for the defendant.

Solicitors: *Pillai & Co.; Mitra & Co.*

HARBAN SINGH v. REGINA.

[A. Cr. J. (Murray-Aynsley, C.J.) April 29, 1954]

[Singapore — Magistrate's Appeal No. 247 of 1953]

Criminal law and Procedure — View of the scene of incident by Magistrate in the absence of accused and accused's counsel.

The appellant was charged in the Court below with driving a car at a roundabout in a dangerous manner an offence under s. 25(1) of the Road Traffic Ordinance, 1941, and punishable under the same section. The case for the prosecution was that the accused at 6.55 p.m. on the day in question drove right handed into Canberra Road from Admiralty Road without negotiating the roundabout while at the same moment a police jeep was emerging from the Canberra Road cutting, — the jeep narrowly avoiding a serious accident. The appellant denied the charge but admitted that his car was there at the alleged time but urged that he passed round the roundabout in the correct and legal manner. The learned Magistrate after the conclusion of the evidence visited the scene of the incident in the company of the prosecuting officer but without the presence of the accused or his counsel, and without having informed either of them of the time when he proposed to view the scene. As a result of his visit he formed certain opinions on which his judgment was largely based. No evidence was produced as to the importance of the "lay out".

Held: if the lay out was of importance evidence should have been produced on the subject. Retrial ordered.

MAGISTRATE'S APPEAL.

A. P. Godwin for the appellant.

G. S. Hill (Crown Counsel) for the respondent.

Murray-Aynsley, C.J.: — In this case the Magistrate had a "view" in the absence of the appellant after the conclusion of the evidence He then formed certain opinions on which his judgment seems to have been largely based. If the "lay out" was of importance I think evidence should have been produced on the subject. The defence would then have had an opportunity to deal with the matter.

Retrial ordered.

Solicitors for the appellant: *Donaldson & Burkinshaw.*

CHIEW YOKE KENG & ANOR. v. PUBLIC PROSECUTOR.

[A. Cr. J. (Matthew, C.J.) May 26, 1954]

[K. L. — Magistrate's Criminal Appeal No. 39 of 1954]

Courts Ordinance, 1948, s. 63(2) — Jurisdiction of Sessions Court — Necessity of strict compliance with conditions laid down to give Court jurisdiction.

In this case the appellants were charged before the Sessions Court and convicted of offences under ss. 373 and 372 of the Penal Code. There was nothing on the record to indicate whether there was an application by the Public Prosecutor nor whether the applicants consented to being tried by the Sessions Court.

Held: (1) before a Sessions Court can have jurisdiction in cases punishable with sentences of imprisonment in excess of seven years the two conditions contained in s. 63(2) of the Courts Ordinance must be complied with, i.e. (i) the Public Prosecutor must apply for the case to be tried and (ii) the accused must consent to being so tried; (2) the two conditions must be strictly complied with and unless they are complied with the Sessions Court has no jurisdiction; (3) as there was no evidence in this case that the conditions had been complied with the Sessions Court had no jurisdiction and the convictions must be set aside.

Case referred to:—

(1) *Mohindar Singh v. The King,* (1950) A.C. 345; (1950) M.L.J. 97.

MAGISTRATE'S CRIMINAL APPEAL.

Dato Sir Roland Braddell (*Ng Ek Teong* with him) for the appellants.

E. Brown (Federal Counsel) for the respondent.

Mathew, C.J.: — The appellants in this case were convicted of offences under sections 373 and 372 of the Penal Code, and were each sentenced to four years imprisonment.

Both these offences are punishable with ten years imprisonment, and the Sessions Court has jurisdiction to try these offences only if the provisions of sub-section (2) of section 63 of the Courts Ordinance have been complied with. This sub-section reads:—

"Notwithstanding the provisions of sub-s. (1), a Sessions Court may try any offence, other than an offence punishable with death or imprisonment for life, if —

(a) the Public Prosecutor applies to such Court to try such offence; and

(b) the accused consents, or if more persons than one are charged together with the same offence, all such accused consent, to be tried by such Court."